

Before the
Federal Communications Commission
Washington, D.C. 20554

SEP 27 1999

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In the Matter of)

Promotion of Competitive Networks)
in Local Telecommunications Markets)

WT Docket No. 99-217

Wireless Communications Association)
International, Inc. Petition for Rulemaking to)
Amend Section 1.4000 of the Commission's Rules)
to Preempt Restrictions on Subscriber Premises)
Reception or Transmission Antennas Designed)
To Provide Fixed Wireless Services)

Cellular Telecommunications Industry)
Association Petition for Rule Making and)
Amendment of the Commission's Rules)
to Preempt State and Local Imposition of)
Discriminatory And/Or Excessive Taxes)
and Assessments)

Implementation of the Local Competition)
Provisions in the Telecommunications Act)
of 1996)

CC Docket No. 96-98

REPLY COMMENTS OF MEDIAONE

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September 27, 1999

No. of Copies rec'd 016
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REPLY COMMENTS OF MEDIAONE

MediaOne Group, Inc. ("MediaOne") submits these reply comments in response to the Commission's Notice of Proposed Rulemaking on the development of competitive networks.^{1/}

^{1/} In the Matter of Promotion of Competitive Networks in Local Telecommunications Markets; Wireless Communications Association International, Inc. Petition for Rulemaking to Amend Section 1.4000 of the Commission's Rules to Preempt Restrictions on Subscriber Premises Reception or Transmission Antennas Designed to Provide Fixed Wireless Services; Cellular Telecommunications Industry Association Petition for Rule Making and Amendment of the Commission's Rules to Preempt State and Local Imposition of Discriminatory And/Or Excessive Taxes and Assessments; Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, WT Docket No. 99-217 and CC Docket No. 96-98, Notice of Proposed Rulemaking in WT Docket No. 99-217 and Third Further Notice of Proposed Rulemaking in CC Docket No. 96-98, FCC 99-141 (released July 7, 1999) ("Competitive Networks Notice" or "NPRM").

MediaOne is the parent company of one of the largest cable television multiple system operators (“MSOs”) in the United States.^{2/} MediaOne subsidiaries provide residential facilities-based competitive local telecommunications service in Atlanta, Georgia; Los Angeles, California; Pompano and Jacksonville, Florida; several communities surrounding Boston, Massachusetts; Detroit, Michigan; and Richmond, Virginia. MediaOne plans to reach additional markets in the near future. MediaOne is a leader in bringing broadband services – including voice, video, and data services -- to all segments of the residential market.

INTRODUCTION AND SUMMARY

MediaOne shares the Commission’s view that “the most substantial benefits to consumers will be achieved through facilities-based competition” rather than resale of incumbent-provided services, “because only facilities-based competitors can break down the incumbent local exchange carriers’ (“LECs”) bottleneck control over local networks and provide services without having to rely on their rivals for critical components of their offerings.”^{3/} MediaOne is investing billions of dollars to build facilities capable of delivering broadband services to residential consumers. As a facilities-based competitor, MediaOne is relatively independent of infrastructure owned by incumbent LECs. Even facilities-based competitors, however, are often vulnerable to the anticompetitive tactics employed by incumbent LECs to deny alternative providers of telecommunications services access to facilities and customers.

As an initial matter, the Commission should clarify its current demarcation rules for telephony, 47 C.F.R. § 68.3, to ensure that building owners, not incumbent LECs, make an

^{2/} MediaOne expects to complete a merger with AT&T Corp. in the first quarter of 2000.

^{3/} NPRM at ¶ 4.

affirmative choice concerning placement of the demarcation point when the incumbent LEC chooses not to adopt a policy of placing the demarcation point at a single minimum point of entry (“MPOE”) in MDUs wired after August 13, 1990. The Commission also should make LEC inside wiring between the demarcation point and the customer’s dwelling unit available as an unbundled network element, as it appears to have done,^{4/} and consider taking additional steps to ensure that incumbent LECs cannot play games with Commission policies favoring competitive choice among telecommunications providers for consumers who live in MDUs. In these comments, MediaOne provides the Commission with examples of specific incumbent LEC abuses that must be addressed promptly if the promise of facilities-based telecommunications competition in the 1996 Act is to become a reality.

I. THE COMMISSION MUST PREVENT INCUMBENT LECs FROM MANIPULATING PLACEMENT OF THE TELEPHONY DEMARCATION POINT IN AN MDU

The NPRM acknowledges that in order to reach individual customers in an MDU, competitive LECs must have nondiscriminatory access to all building and riser conduit and other space for installation of their own facilities, or both.^{5/} Under the Commission’s current rules, 47 C.F.R. § 68.3(b)(2), competitive LECs are entitled to nondiscriminatory access to the wire pairs at an MPOE in any building where the wiring was installed after August 13, 1990, unless

^{4/} See “FCC Promotes Local Telecommunications Competition; Adopts Rules on Unbundling of Network Elements,” News Release (issued September 15, 1999) (“UNE Remand Public Notice”) at 2. The text of the underlying order has not been released, so the specifics of the Commission’s decision to make inside wiring available as a UNE are not yet known to the public. Because the order has not been released, and because inside wiring is a central issue in this proceeding, MediaOne includes the arguments in favor of establishing a separate UNE for inside wiring in these comments.

^{5/} See NPRM at ¶ 34.

the building owner decides to place the demarcation point at another location or establish separate points for each unit within the building.^{6/}

Unfortunately, the current rules enable the incumbent LECs to deny rivals truly non-discriminatory access to an MPOE at an MDU. For example, BellSouth effectively circumvents the rules by placing the demarcation point at each customer's unit unless the building owner specifically demands a single demarcation point at the MPOE.^{7/} Building owners rarely understand the significance of the decision to place a demarcation point beyond the MPOE, so they generally do not object to BellSouth's request. As a result only a handful of MDUs in BellSouth's territory - no more than thirty - have the demarcation point at the MPOE.^{8/} By relying on this negative confirmation process to set the demarcation point, BellSouth, not the building owner, effectively adopts a policy of placing multiple demarcation points within an MDU, in contravention of the Commission's rules. The Commission should clarify the demarcation rules, as suggested by the NPRM,^{9/} to ensure that building owners make an affirmative choice concerning placement of the demarcation point when the incumbent chooses

^{6/} See 47 C.F.R. § 68.3(b)(2); see also In the Matter of Review of Sections 68.104 and 68.213 of the Commission's Rules Concerning Connection of Simple Inside Wiring to the Telephone Network and Petition for Modification of Section 68.213 of the Commission's Rules filed by the Electronic Industries Association, CC Docket No. 88-57, Report and Order and Further Notice of Proposed Rulemaking, 5 FCC Rcd 4686 (1990).

^{7/} See Direct Testimony of W. Keith Milner, In the Matter of MediaOne Telecommunications of Georgia, LLC v. BellSouth Telecommunications, Inc., Docket Nos. 10135-U and 10418-U (Georgia PSC, August 24, 1999) at 227-28.

^{8/} See Direct Testimony of W. Keith Milner, In the Matter of Petition by MediaOne Florida Telecommunications, Inc. for Arbitration of an Interconnection Agreement with BellSouth Telecommunications, Inc. Pursuant to Section 252(b) of the Telecommunications Act of 1996, Docket No. 990149-TP (Florida PSC, July 9, 1999) at 223.

^{9/} See NPRM at ¶ 65.

not to adopt a policy of placing it at the MPOE in buildings wired after the August 13, 1990, grandfather date in the existing version of the rules.

Without enforcement, this clarification may not address many other forms of abuse by incumbent LECs in denying non-discriminatory access to MDUs. In California, Pacific Bell refused to place the demarcation point at the MPOE despite an express and unequivocal request by a building owner, ignoring a requirement under state law to reconfigure MPOEs at the request of any building owner willing to pay for the change.^{10/} The Public Utilities Commission of the State of California found that Pacific Bell “relied solely on its discretion in determining which customer requests for reconfiguring or adding MPOEs to honor and which to deny,” moving the MPOE where the building owner requested the change based on remodeling needs but declining to make any change in order to accommodate access by a competitive LEC.^{11/}

Where the demarcation point is at the MPOE, the best way to address this type of gamesmanship and assure non-discriminatory treatment by LECs is to mandate access by a competitive LEC to a common cross-connect arrangement at a single MPOE. If such an arrangement does not already exist, it could be created by reterminating inside wire pairs at the customer’s side of the MPOE demarcation on a new cross-connect block, such as the common “66-type” multipair block. Customers who subscribe to a competitive LEC’s services would be disconnected from the incumbent LEC’s network at the MPOE and cross-connected to the relevant 66-block pair for access to the competitor’s facilities.

^{10/} See Irvine Apartment Communities, Inc., by and through its agent, CoxCom, Inc., dba Cox Communications Orange County, and Cox California Telecom, Inc. v. Pacific Bell, Case 98-02-020, Opinion (Calif. PUC, filed February 13, 1998).

^{11/} Id. at 23.

II. THE COMMISSION SHOULD TAKE ADDITIONAL STEPS TO CORRECT CURRENT INCUMBENT LEC ABUSES IN PROVIDING TELECOMMUNICATIONS IN MDUS SUGGESTED BY MEDIAONE AND OTHER COMPETITIVE LEC COMMENTERS

The initial comments submitted in response to the NPRM include several thoughtful and constructive proposals that may help limit the ability of incumbent LECs to interfere with competitive access by additional telecommunications providers to MDU customers. The comments filed by AT&T,^{12/} ALTS,^{13/} and CompTel^{14/} contain intriguing proposals that might address LEC abuses of the kind MediaOne has encountered. Like MediaOne, these companies have extensive real-world experience in attempting to introduce telecommunications competition, and their comments should receive thorough consideration as the Commission considers how best to eliminate barriers encountered by new entrants in the MDU environment.

MediaOne, for example, has argued that the wiring connecting an incumbent LEC's loop distribution facilities at an MPOE to the individual units in an MDU – infrastructure known as “network terminating wire,” or “NTW” – should be classified as an unbundled network element. As MediaOne explained in detail in the Commission's docket concerning the standards for unbundled elements after the Supreme Court's decision in Iowa Utilities Board v. FCC, access to this wiring is crucial to the development of local competition.^{15/} MediaOne was encouraged to

^{12/} See Comments of AT&T at 14-44.

^{13/} See Comments of ALTS at 20-21, 24, and attachment.

^{14/} See Comments of CompTel at 8-24.

^{15/} See Comments of MediaOne, In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Services Providers, CC Docket Nos. 96-98 and 95-185 (filed May 26, 1999) (“MediaOne UNE Remand Comments”) at 7-8.

see that the news release announcing the Commission's UNE Remand decision indicates that inside wiring and subloops owned by incumbent LECs will be made available as unbundled elements at "any accessible point," including the MPOE and the network interface device ("NID").^{16/} The text of the underlying order, however, has not been released to the public. To the extent that the UNE Remand Order does not address the abuses encountered by MediaOne in its dealings with incumbent LECs, the Commission should use the instant proceeding to fill in the gaps.

Not all incumbent LECs currently maintain control over NTW, but those that do can create serious obstacles to competition by denying their rivals non-discriminatory access for provision of telecommunications services. For example, MediaOne has encountered serious difficulties in reaching agreement on access to NTW under the control of BellSouth. Where the NTW is in a wiring closet, BellSouth proposes installation of an "access" cross-connect panel near the cross-connect panel that interconnects BellSouth's distribution plant with the NTW, allowing a competitive LEC to interconnect its distribution plant to the access panel. A BellSouth technician uses a "jumper" wire to cross-connect the access panel to the panel interconnecting BellSouth's distribution facilities to the NTW. BellSouth reserves the first NTW pair and agrees to provide it to the competitive LEC only if all "spare" pairs are in use and the end user wants to change service from BellSouth to the competitor.^{17/}

^{16/} See UNE Remand News Release at 2.

^{17/} In fact, BellSouth has indicated that it may not offer NTW as a UNE at all absent a specific requirement imposed by the FCC. If NTW is not unbundled, MediaOne would be forced to purchase an entire loop to obtain access to NTW, bypassing its own facilities. See Direct Testimony of Alphonso J. Varner, Docket No. 990149-TP (Florida PSC April 1, 1999) at 15 ("the specific list of network elements that must be provided will not be known until the FCC completes its proceeding on remand of rule 51.319. As an accommodation to MediaOne,

BellSouth's NTW access proposal is unnecessarily expensive and complicated. It unfairly discriminates against competitive LECs. Only BellSouth has access to its original cross-connect panel, so BellSouth must send a technician - at competitive LEC expense - to reconfigure the wiring at or near the MDU entrance in order to provision an NTW pair. When BellSouth provisions service for one of its own customers in the MDU, it does not need to call out a competitive LEC's technician, even if it is disconnecting a competitor's service. In fact, BellSouth often can provision service without dispatching a technician. BellSouth's NTW proposal, however, always requires the competitive LEC to pay for a technician whenever the competitor provisions service.

The consequence is that each time a new customer orders competitive LEC service, the competitive LEC must pay to have a BellSouth technician rearrange the jumper wires between the cross-connects. A competitive LEC can reduce charges for technician visits by ordering NTW pairs for every unit in the building, but then it must pay BellSouth a monthly charge for each pair whether it has a customer using the pair or not. Even if the competitive LEC ordered an NTW pair for every unit, it would have to pay BellSouth a fee for its technician whenever a customer orders a second line.

Unless a competitive LEC wants to pre-wire NTW pairs to every unit, it must coordinate work by its own technicians with visits by BellSouth's workers. The BellSouth technician must finish work before the competitive LEC's technician completes the installation or the service connection will not work. The task of coordinating a single technician's visit with a customer's

BellSouth is willing to provide the NTW capability prior to completion of that proceeding. However, BellSouth reserves the right to reconsider whether it will continue to offer NTW upon completion of the FCC's proceeding.")

schedule is difficult enough, and adding a BellSouth technician's schedule to the mix complicates matters even further, increasing the probability of disruptions, delays, and dissatisfied customers.

BellSouth's proposal also does not include a NID, so the competitive LEC's technician must locate the "first" jack within the unit and reconnect the inside wiring to the NTW pair that BellSouth will allow the competitor to use. In many MDUs, BellSouth has not installed NIDs in each unit and claims that the demarcation point between the NTW and the inside wiring inside the unit is behind the "first" jack, the point where the NTW enters the unit.^{18/} In these cases, the competitive LEC's technician must locate the first jack, disconnect the first NTW pair, and connect the competitive LEC's assigned pair. The jacks are not labeled, so the competitive LEC's technician has no way of knowing which is the "first" jack. The technician must remove each jack, inspect it, rewire it, and retest it to locate the first jack. If BellSouth wins back the customer, it will not have to go through this process, because the competitive LEC will have located the first jack.

BellSouth's NTW policies are a serious impediment to competition for MDU customers, because they force competitive LECs to pay technicians employed by BellSouth to perform work that serves no useful purpose or could just as readily be performed by the competitive LEC. By making NTW available as a UNE – and by clarifying its current demarcation rules for telephony -- the Commission would take an important step toward increasing competition in the market for telecommunications services in MDUs.

^{18/} Though BellSouth has not installed NIDs in most of the MDUs it serves, it proposes to require MediaOne to install them whenever MediaOne uses BellSouth's NTW to serve an MDU customer.

CONCLUSION

For the above reasons, MediaOne asks the Commission to adopt these recommendations to encourage the development of competitive networks capable of delivering a wide array of telecommunications services.

Respectfully submitted,

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September 27, 1999

CERTIFICATE OF SERVICE

I, Jette Ward, hereby certify that on this 27th day of September, 1999, I caused copies of the foregoing "REPLY COMMENTS OF MEDIAONE," to be served by U.S. mail, first class, postage prepaid, or by hand delivery (*) on the following:

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